

REMARKS

Claims 1-36 are pending. The examiner has issued a restriction requirement calling on applicant to elect a single species to prosecute on the merits from among:

organic nitrates, inorganic nitrites, potassium nitrate, cesium nitrate, barium nitrate, ammonium nitrate, nitropropane, dinitrobenzene, nitrotoluene, dinitrotoluene, nitropyridine, nitrobutanes and dialkyl imidazolium.

Applicant elects, with traverse, organic nitrates. Claims 1, 2, 5-28 and 31-3 read on the elected species.

Traverse

The species from among which the examiner has required applicant to elect comprise a Markush group. As such, the dictates of MPEP 803.02 pertain. There, it is stated that

Markush groups ordinarily must belong to a recognized physical or chemical class or art-recognized class. However, when the Markush group occurs in a claims reciting a process or a combination (not a single compound), it is sufficient if the members of the group are disclosed in the specification to possess at least one property in common which is mainly responsible for their function in the claimed relationship, and it is clear from their very nature or from the prior art that all of them possess this property.

In the present instance, the class of N-O additives comprising organic nitrates and inorganic nitrites have not one but at least two properties in common: "the N-O electrolyte additives of the present invention show low rates of reaction of cell components with lithium metal of the anode, improved discharge capacity, and a high charge-discharge efficiency." Page 5, lines 22-24. It is also stated on page 10, lines 10-3 that "Furthermore, if the ionic N-O additive of the present invention is, for example, organic nitrate, organic nitrate, or inorganic nitrite it may provide ionic conductivity to the electrolyte in which case no additional ionic lithium electrolyte salts may be needed." The criterion of MPEP 803.02 that "it must be clear from their very nature" that the compounds possess the property is easily met: they are all ionic and ionicity is the characteristic that permits solutions of the ionic material to be electroconductive. Clearly, all the requirements of MPEP 803.02 are met.

It is further noted that it would impose no serious burden on the examiner to search both "organic nitrates" and "inorganic nitrites;" in fact, applicant respectfully suggests that a search term along the lines of "electrochemical cell and organic nitrate and/or inorganic nitrite" would likely fill the bill.

The examiner is requested to reconsider the restriction requirement and to revise it to include both organic nitrates and inorganic nitrites.

CONCLUSION

Applicant requests a one month extension of time to file this response. The Commissioner is authorized to charge the fee due to Squire, Sanders & Dempsey Deposit Account No. 19-3878.

Date: 11January 2010

Respectfully submitted,

/Bernard F. Rose, Reg. No. 42,112/
Bernard F. Rose
Reg. No. 42,112
Attorney for Applicants

Squire, Sanders & Dempsey L.L.P.
Two Renaissance Square,
40 North Central Avenue, Suite 2700
Phoenix, AZ 85004-4498
Telephone: (602) 528-4000
Telephone: (415) 954-0200 (Direct)
Facsimile: (602) 253-8129